

**REGULAR STATE BANKING BOARD MEETING
HELD BY CONFERENCE CALL
OFFICE OF THE COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS
2000 SCHAFER STREET, SUITE G
BISMARCK, NORTH DAKOTA**

January 8, 2004

The regular meeting of the State Banking Board was held in the Office of the Commissioner, Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota. Chairman Karsky called the meeting to order at 9:00 a.m., Thursday, January 8, 2004, by conference call.

MEMBERS PRESENT: Timothy J. Karsky, Chairman (*Office*)
Ron Braseth, Member (*Mayville*)
Bill Daniel, Member (*Bismarck*)
Launa Moldenhauer, Member (*Bismarck*)
Roger Monson, Member (*Finley*)
Gary Petersen, Member (*New Town*)
Terry Zeltinger, Member (*Minot*)

MEMBERS ABSENT: None

ALSO PRESENT: Robert J. Entringer, Assistant Commissioner (*Office*)
Jeff Jungman, Chief Examiner – Banks (*Office*)
Scott Miller, Assistant Attorney General (*Office*)
Doug Anderson, Assistant Attorney General (*Office*)

APPROVAL OF MINUTES

Chairman Karsky indicated the Board received copies of the minutes of the regular meeting held on November 13, 2003, and the special meetings held on December 3, 2003, and December 30, 2003. **It was moved by Member Petersen, seconded by Member Braseth, and unanimously carried to approve the minutes as published.**

SHARING AGREEMENTS WITH ARIZONA, MINNESOTA, MONTANA, OKLAHOMA, SOUTH DAKOTA

Chairman Karsky indicated there are North Dakota banks with branches in Arizona, Minnesota, one bank has a branch in Montana, and a South Dakota bank has a branch in North Dakota. In the past the Department has had Sharing Agreements in which the assessments are shared with the other states based on the percentage of deposits of the North Dakota bank held in the other states. Chairman Karsky stated the Department would let the other state collect on its share of the assessments for its share of the deposits located in that state. The problem with this arrangement is that the Department has not asked for any assistance from these other states, nor has South Dakota asked us for assistance on its North Dakota branch. Chairman Karsky indicated he has sent new agreements to Arizona, Minnesota, Montana, and has entered into a new agreement with Oklahoma and South Dakota, whereby the home state would collect the entire assessment and if the Department were to use the other state during the examination process we would pay them an hourly fee plus expenses. Chairman Karsky indicated he has cancelled all of the old Sharing Agreements that were in existence by giving each of the states a 30-day notice. Chairman Karsky stated what we are asking is that the State Banking Board approve the proposed new agreements.

Chairman Karsky explained the reason we have entered into an agreement with Oklahoma is they are in our district for the Conference of State Bank Supervisors and they wanted to enter into agreements with all the states within their region for Conference of State Bank Supervisors.

Chairman Karsky indicated he has contacted Arizona Commissioner Dick Houseworth, and he is in total agreement with the proposed Sharing Agreement. Chairman Karsky indicated he is not sure whether Minnesota will agree to the proposed Sharing Agreement and, if not, we will have to come to the Board with an alternative agreement for Minnesota.

Member Petersen inquired where the agreement was obtained. Chairman Karsky indicated it is the agreement we entered into with Oklahoma, and that it is a fairly common agreement among the Conference of State Bank Supervisors.

Chairman Karsky indicated when these agreements were initially setup the intent was to be revenue-neutral; however, with budget constraints the past years more states are moving to this type of agreement where the fees are retained unless assistance is required by the host state.

Member Monson inquired as to the impact to the Department's budget with the change in these Sharing Agreements. Chairman Karsky indicated the Department would give up \$5,000 in revenue from South Dakota, but expected the additional revenue to be in the neighborhood of \$90,000 from the offices in Minnesota, Montana, and Arizona.

It was moved by Member Moldenhauer, seconded by Member Monson, and unanimously carried to approve the Sharing Agreements with Arizona, Minnesota, Montana, Oklahoma, and South Dakota.

ITEM TO BE NOTED

Comptroller of the Currency

Approved 11-6-03, Wells Fargo Bank North Dakota, National Association, Fargo, merged into Wells Fargo Bank, National Association, San Francisco, CA.

DISCUSSION ITEMS

Farm Credit Services

Chairman Karsky indicated with regard to the issue of whether or not Farm Credit Services is receiving deposits by allowing its customers to prepay their line of credit was reviewed by Assistant Attorney General Miller.

Assistant Attorney General Miller indicated Chairman Karsky had sent a letter to Farm Credit Services questioning what they were doing and they replied to the Department in a letter dated December 4, 2003, citing several provisions of federal law in support of their argument that they can do what they are proposing. Assistant Attorney General Miller indicated the support Farm Credit Services provided was in favor of its position that it could provide the activities it was conducting. Assistant Attorney General Miller stated the federal law provides that the Farm Credit banks have the authority to offer such financial related services appropriate to their on-farm and aquatic operation as determined to be feasible by the Board of Directors of the bank under regulations of the Farm Credit Administration, and that appears to be what is happening. Assistant Attorney General Miller suggested to Chairman Karsky that if there are some sort of

securities that are being bought and sold that would be something under the purview of the Securities Department, not this Department.

Chairman Karsky indicated he did talk to Karen Tyler, Commissioner of the Securities Department about this issue, and that he would be sending this information to her for review. Commissioner Tyler indicated there are many exemptions for banks under the securities laws; however, Chairman Karsky indicated this is not a bank, but rather a quasi-government agency. Commissioner Tyler indicated she would review this issue.

Chairman Karsky stated he does not have a problem with Farm Credit Services offering debentures, but the way they are offered appears to be more like a deposit, and he feels Farm Credit Services is not authorized to accept deposits. The debentures that Farm Credit Services is selling could be purchased for one day, three days, and the amounts could vary on a daily basis, and this does not appear to be the true intent of the law allowing them to sell debentures.

Chairman Karsky indicated one of the banks in the Grand Forks area that owns an insurance agency has been approached by Farm Credit Services to sell the agency to them, and added what Farm Credit Services is doing appears to go beyond the scope of their powers; however, it would be extremely difficult battle to win.

Chairman Karsky stated he wants to speak with John Blanchard, American Bankers Association (ABA), and other states looking at this issue that are in support of our position and believe that what Farm Credit Services is doing is wrong. Chairman Karsky stated we need to find a way to battle this issue.

Member Monson indicated this is an ongoing issue with the ABA, and he is supposed to meet with individuals regarding a related issue on March 1, 2004. Member Monson asked Assistant Attorney General Miller whether it was his understanding that Farm Credit Services, under federal law, could do essentially anything it wants. Assistant Attorney General Miller stated Farm Credit Services has authority to do many different things, adding that he was not sure exactly what it is doing, as all he did was look at the response letter to see if it was accurate. Assistant Attorney General Miller stated the law cited was accurate. Assistant Attorney General Miller continued that Farm Credit Services can offer what it refers to as financial related services appropriate for its members. Assistant Attorney General Miller indicated Farm Credit Services has specific hoops it must

go through before increasing the number of services it provides, but does have some specifically enumerated powers as well.

Member Monson indicated it appears once the banking groups present opposition on Capitol Hill, Farm Credit Services appears to refrain; therefore, Member Monson encouraged Chairman Karsky to continue visiting with his counterparts in addressing this issue.

NoDak State Trust Company

Chairman Karsky referred to a copy of the memorandum Land Commissioner Gary Preszler (former Commissioner of the Department of Financial Institutions) sent to him and Doug Anderson, Assistant Attorney General, concerning NoDak State Trust Company.

Chairman Karsky stated one thing he is concerned about is whether the State Banking Board feels we have not taken enough action regarding NoDak State Trust Company. He stated he received several calls regarding the Land Commissioner Preszler's memo, and that he feels the memo outlines issues the State Banking Board has known about for a long time: (1) what the trust company could do before 1963 and after; (2) we are well aware of the Supreme Court case since it was very critical in the District Court's decision to uphold our position that the trust company does not have banking powers, which the Department won and continues to prevail on this issue; and (3) on the website, regarding the press coverage – again the Department was aware those issues were out there and other articles have been written. Chairman Karsky stated some articles refer to NoDak State Trust Company as being a bank; however, he does not believe this is an important issue to fight and ask for a retraction.

Chairman Karsky stated as of today this issue is before the Supreme Court and a hearing is forthcoming.

Assistant Attorney General Anderson stated that NoDak State Trust Company filed an Appeal from the District Court decision, and we entered into Stipulation regarding the serving of a Supersedeas Bond which would protect us; we have a de minimus \$100 bond set. Assistant Attorney General Anderson stated we received a Stipulation from NoDak State Trust Company, and that we consider NoDak State Trust Company to remain a dissolved entity pending appeal. He stated we are comfortable with the Order for Stay pending appeal. Assistant Attorney General Anderson stated NoDak State Trust Company's brief is due on

January 13, 2004, and that Chairman Karsky will receive it and forward it on to the State Banking Board. Assistant Attorney General Anderson stated our brief will be due 30 days after receipt of their brief. Assistant Attorney General Anderson stated he anticipates this will be set for oral argument before the Supreme Court probably in April or May 2004, and we will keep the State Banking Board advised of that. Assistant Attorney General Anderson stated there will be a web broadcast of that argument, so if the State Banking Board members do not want to attend it will be available on the web. Assistant Attorney General Anderson stated it will probably be June or July 2004 before we get a decision in this matter. Assistant Attorney General Anderson stated we feel very comfortable with our position, and that he does not anticipate any problems.

Chairman Karsky stated as far as the State Banking Board is concerned, on Etalon, we turned down their application – they are not even being dealt with on a day-to-day basis. He stated that the application by Accent Oil and Gas was never acted upon since our position was that we did not have to. Chairman Karsky stated he believes Jane Kirby knows she does not have the authority to sell because the Department views this is a dissolved entity, the State Banking Board took action on this, and this is why the issue is before the Supreme Court right now.

Assistant Attorney General Anderson stated he had a call last Friday from Attorney Bill Delmore, who is working with Tom Kelsch on this matter, and reminded him that Jane Kirby does not have the authority to do anything with NoDak State Trust Company. Assistant Attorney General Anderson stated this may not stop Ms. Kirby, but that he did convey our position at this time.

Chairman Karsky stated our position is that NoDak State Trust Company is in the process of being liquidated, and Assistant Attorney General Anderson added it is also our position the trust company is dissolved.

Assistant Attorney General Miller pointed out when we found out what Etalon was doing, we did notify Consumer Protection and Securities in Oregon, Washington, and California. At that time there was not much response from these states; however, citizens are now being taken for \$3.5 million and the states are now looking to North Dakota. Assistant Attorney General Miller stated we did take action and did not just sit and watch Etalon do whatever they wanted. Chairman Karsky added he believes the Attorney General's Office put out notice to all states.

Chairman Karsky stated he believes in the last few years we have done everything possible to move this along, since it came into conservatorship in 1990.

Assistant Commissioner Entringer stated he had a request for records from the Washington Department of Financial Institutions on any information we had on Etalon, which were provided to them in November 2003. He stated this accomplished what we could do to assist them in their pursuit, as they had already issued a Cease and Desist Order against Etalon.

Member Petersen stated he feels this Board, the attorneys, Commissioner, and Assistant Commissioner have done a great job with this the past two years – working very hard to bring this out of the point of “nothing happening”. He stated the Commissioner did something to accomplish this, and that the Board worked very hard to accomplish the things that needed to be done to bring this to finality. He concluded he does not believe any actions needed to be defended.

Member Monson stated he totally agrees with Member Petersen, that he feels everything needed to be done has been, and that he does not believe there is an issue here at all.

Member Braseth agreed with the previous statements.

Chairman Karsky asked Assistant Attorney General Anderson to keep the Department and State Banking Board abreast of any upcoming issues, but stated he believes all of this will be handled through briefs. Assistant Attorney General Anderson concurred everything will be accomplished in writing, and that any request for information will have to be based on public record.

Chairman Karsky stated he feels our position is very strong and hopefully will prevail. Chairman Karsky stated the State Banking Board will be notified when the hearing is scheduled so that the Board can listen to it through the web.

Member Moldenhauer questioned whether a response to Land Commissioner Preszler is necessary. Chairman Karsky stated he does not understand how the Land Department comes into this issue, and that Mr. Preszler is no longer Commissioner of the Department of Financial Institutions. Member Moldenhauer questioned if this had been received from a concerned citizen, would the Department have sent a response. Chairman Karsky stated we can certainly reply to Mr. Preszler. Chairman Karsky indicated he sent an email to Mr. Preszler thanking him for the information, but that we were aware of the powers of the pre-

1963 and after-1963 trust, and that he was not getting into a media type thing. It was agreed this would be suffice as a response.

The Board went into closed session at 9:26 a.m., and reconvened to open session at 10:00 a.m.

HEARING – PROPOSED RULES ON DISCLOSURE OF CUSTOMER INFORMATION BY FINANCIAL INSTITUTIONS

The hearing began at 10:03 a.m. and concluded at 10:30 a.m.

Timothy J. Karsky, Chairman

Robert J. Entringer, Secretary